Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

Jodon Antonio Slaughter
Petitioner
v.
The State of Mississippi
Respondent

On Petition for Writ of Certiorari
To The Mississippi Supreme Court

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1. Whether the State Trial Court violated Petitioner Slaughter's Sixth and Fourteenth Amendment rights to fully confront witnesses against him by denying him an opportunity to fully cross-examine prosecution witnesses regarding immunity agreements they received and their motives for testifying before a Federal Grand Jury in Atlanta Georgia when it was the Federal Grand Jury testimony which lead to the Mississippi State indictment of Jodon Slaughter for the murder of Kelvin Reynolds.

2. Whether the State Court's refusal to grant an instruction to examine and weigh testimony of prosecution witnesses who initially provided evidence against the defendant in exchange for immunity from the Federal government with greater care and caution than the testimony of ordinary witnesses violated defendant's right to a fair trial as guaranteed him by the Sixth and Fourteenth Amendments to the United States Constitution.

Parties Below

The parties before this court are Petitioner Jodon Antonio Slaughter, a Mississippi inmate currently confined for life pursuant to a murder conviction and Respondent, the State of Mississippi.

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OPINION BELOW AND JURISDICTION

1. Review is sought of the opinion of the Mississippi Supreme Court affirming the rulings of the trial court which excluded testimony and refused jury instructions. The opinion is reported as *Slaughter v. Mississippi*, 2000-KA-01533-SCT, Feb. 14, 2000; reh denied 5/23/2000(Miss 2002) (Appendix 1)

2. The Mississippi Supreme Court denied the Motion for Rehearing on May 23, 2002. *Slaughter v. Mississippi*, 2000-KA-01533-SCT, Feb. 14, 2000; reh denied 5/23/2000(Miss 2002) (Appendix 2)

3. This petition for certiorari is authorized to be filed on or before August 21, 2002 pursuant to 28 United States Code § 1257 and Rule 13, Supreme Court Rules.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend VI provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. Amend XIV (1) provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein the reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On April 29, 1998 Kevin Reynolds was shot to death while sitting in his Ford Explorer in the parking lot of River 10 Apartments, Gulfport, Mississippi. On May 13, 1999 Petitioner, Jodon Slaughter was indicted for murder and three others, Regina Richardson, Ken Ogletree, and Tracy Stepney, were indicted for "accessory after the fact" to the same murder (CP 8; T 386) The indictment against Regina Richardson was dismissed in exchange for her testimony against Slaughter. (Tr. 382-385) Neither Ken Ogletree or Tracy Stepney testified at Slaughter's trial.

Jodon Slaughter was found guilty of the murder in the Circuit Court of Harrison County, First Judicial District and received a mandatory sentence of life in prison. Slaughter's conviction was affirmed on appeal. *Slaughter v. Mississippi*, 2000-KA-01533-SCT, Feb. 14, 2002; reh denied 5/23/2002(Miss 2002)

At issue is the trial court's failure to allow Slaughter to cross-examine State witnesses about immunity agreements they received and their motives for testifying as they did before a Federal Grand Jury in Atlanta, Georgia and subsequently in the Trial Court. The grand jury testimony ultimately led to the indictment and conviction of Jodon Slaughter in the Mississippi State Court. Also at issue is the Trial Court's refusal to instruct the jury to consider the testimony of Regina Richardson or any witness who provided testimony in exchange for immunity from punishment with great care, caution and suspicion. (Tr. 667-670; CP 630, 632)

Jodon Slaughter was a resident of Atlanta, Georgia where he worked for a car dealership. Kelvin Reynolds (the victim) had moved from Atlanta, Georgia to Mississippi a few weeks prior to his death

and was staying with a friend at River 10 Apartments. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶7 (Feb. 14, 2002). Reynolds and Slaughter had known each other for a number of years.

On Wednesday April 29, 1998 Petitioner Jodon Slaughter, Ken Ogletree and Tracy Stepney came to Gulfport to gamble at the Grand Casino. Upon arrival they were met for lunch by Darryl Screven a casino host who knew Slaughter and Reynolds. That evening Slaughter and Reynolds both paged Screven several times. Slaughter asked Screven to return to the casino. According to Screven, Slaughter told him that Reynolds was bringing his vehicle to Slaughter for Slaughter to use and that Reynolds would need a ride back to Valerie Seldon's apartment. When Screven returned to the Casino Slaughter was not there. Screven learned later that night that Reynolds had been killed. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶8-9, 11-12 (Feb. 14, 2002).

At the time of the shooting Slaughter, Reynolds and others were under investigation by the FBI and Secret Service in Atlanta, Georgia. The federal investigation concerned fraud, possessing and uttering counterfeit checks, alteration of vehicle identification numbers and money laundering. (CP 24) After Reynolds' death the Federal Grand Jury in Atlanta began an investigation concerning the possibility that Slaughter may have shot Reynolds to prevent Reynolds from cooperating with the federal authorities. Lemuel Murray (CP 24-25), Kelly Seldon (CP 195-196), Linda Dugan (CP 350-351), and Regina Richardson (CP 429-430) received use immunity from the Federal authorities in exchange for their testimony against Slaughter.

The information obtained by the U.S. Attorney's office concerning Jodon Slaughter and the death of Kelvin Reynolds was provided to the Harrison County District Attorney's office and ultimately murder and accessory indictments were obtained. Regina Richardson was indicted by the State of Mississippi as an accessory after the fact to Reynolds' murder. The charge against her was dismissed in exchange for her testimony at Slaughter's murder trial.

Rulings on the Testimony

The State of Mississippi obtained an order *in limine* preventing Slaughter from making any reference to the criminal investigation by the Federal agencies or any reference to the criminal character of the victim, Reynolds. (Appendix 2; T. 115-125) Slaughter objected and argued that the federal investigation was material to the defense because the murder indictment stemmed directly from the Federal Grand Jury investigation and it showed that someone other than Slaughter had a motive to kill Reynolds. (Appendix 2; Tr. 119). Slaughter also argued that the jury should be able to hear about the immunity and deals given to the various witnesses and how they came to testify before the Federal Grand Jury so that the jury could determine their motives for testifying and credibility. (Appendix 2; Tr. 115-125) The motion *in limine* was sustained as far as comments in opening statement. (Appendix 2; Tr. 120) Defense counsel moved for a mistrial after the ruling *in limine* arguing that the ruling prevented him from making an effective opening statement. (Appendix 2; Tr. 122-123, 125)

Counsel for Slaughter repeatedly attempted to persuade the trial judge that it was imperative to his defense that the jury be allowed to hear testimony concerning the immunity given to the witnesses before the Federal Grand Jury but each time, the trial court refused to allow the evidence. (Appendix 2; T. 146-155, 313-314, 342-372, 519-521, 534-536) Prior to making his opening statement counsel for Slaughter argued again to the court that Slaughter's defense is based on "the fact that there was a Federal Grand Jury investigation, that there was criminal activity which was taking place unrelated to a murder, most of which was taking place in Atlanta." (Tr. 147)

The Witnesses, Agreements, and Proffers

Lemuel "Buck" Murray

Lemuel Murray was Slaughter's co-worker in Atlanta. Murray's grand jury testimony reflects that he was given immunity and was told that the target of the grand jury was Jodon Slaughter. (CP 24-25)

In the State Court Trial Murray testified that about two weeks prior to Reynolds' death, Slaughter told Murray that Reynolds "was a F---- rat, and he had people coming up from Miami bringing him a silencer and he was gong to blow Kelvin Reynolds's f--- head off." The next time Murray spoke with Slaughter was on April 30, 1998, the day after the murder of Reynolds. Slaughter called Murray and told him he was back from Mississippi and asked if he had heard what had happened to Reynolds. Slaughter told him that the "word was on the street that [I] killed Kelvin Reynolds." *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶29-30 (Feb. 14, 2002).

Prior to Murray's testimony, Slaughter argued that the statements could only be explained by discussing the other criminal activity that was taking place. (Tr. 147) When Lemuel Murray was called by the State, defense counsel again attempted to raise the issue of cross examination regarding the federal investigation. (Tr. 519-521) A proffer of Murray's testimony was made. (Tr. 526-534) During a State Trial proffer Murray repeatedly invoked his fifth amendment rights but did admit that he knew from the beginning that "they" wanted Jodon Slaughter. (Tr. 530) The trial judge excluded from the jury information that Murray had received immunity from the Federal authorities stating that the federal immunity given Murray had nothing to do with the prosecution of Slaughter in the murder case. The Court again ruled that "the matter of the investigation in Atlanta, Georgia, the Grand Jury testimony, all of that is going to be excluded, and I stand by ruling on that." (Tr. 535)

Kelly Seldon

Kelly Seldon, Regina Richardson's sister, had become involved with Jodon Slaughter and as the investigation in Georgia continued Kelly was coming under pressure from the FBI to tell the authorities "everything that she knew" about Slaughter. Kelly was afraid she would be arrested. (Proffer of Regina Richardson, Tr. 348-349) Richardson secretly listened over the telephone as the authorities pressured Kelly Seldon to testify against Jodon Slaughter. (Proffer of Regina Richardson, T. 347) Seldon had a use immunity agreement with the federal government. (CP 195-196)

Kelly Seldon testified at the State trial. According to her on the night of the murder Richardson called and told her about the murder. Seldon did not know Reynolds but had met Slaughter. Slaughter showed up at Kelly's house a day or two after Reynolds was killed. Richardson was at Seldon's house at the time and Richardson left with Slaughter. Later Kelly Seldon became personally acquainted with Slaughter and involved with him. *Slaughter v. Mississippi,* 2000-KA-01533-SCT,¶32 (Feb. 14, 2002).

Linda Dugan

Linda Dugan was Slaughter's former spouse. She was invited to go to Mississippi with Slaughter but did not go. Slaughter called her on the night of April 29-30 and stated he was in Mississippi. *Slaughter v. Mississippi,* 2000-KA-01533-SCT,¶31 (Feb. 14, 2002). Dugan had a cooperation agreement with the Federal authorities. (CP 350-351)

Linda Dugan who had testified against Jodon Slaughter in the Federal Grand Jury was convicted of federal charges which Slaughter argued would certainly go to her motive and reason for making statements against Slaughter. It was Slaughter's position that the defense should be allowed to bring out "any motive or bias that the witnesses' had against Slaughter." (Tr. 148) In order to defend the charge against Slaughter the motives of the witnesses would have to be explored and disclosed. (Tr. 148)

Regina Richardson

Regina Richardson was a dealer at Grand Casino and knew Slaughter through his visits to the Grand.

A proffer was made of her testimony concerning the federal investigation and her testimony before the Federal Grand Jury. (Tr. 342-354) Richardson was concerned that her sister, Kelly Seldon, was going to be arrested. As Richardson testified in her proffer, "I was at no point going to allow my sister go to jail for anything that had to do with Jodon Slaughter. . ." (T. 349) To prevent that she contacted the federal authorities and "gave" them Jodon Slaughter as the murderer of Kelvin Reynolds. (Tr. 345) Richardson testified that she asked the federal authorities what she could do to make the problem (the fact that her sister was going to go to jail) go away. The told her to come talk to them and she described the solution, "to put the man [Jodon Slaughter] in jail that was, quote, unquote, threatening her life." (Tr. 352)

Richardson had been interviewed by State authorities and had had "numerous opportunities" after the shooting to tell them of Slaughter's alleged culpability but until the Federal Grand Jury testimony her version of the events exculpated Slaughter and herself. (T. 401) After Richardson testified before the Federal Grand Jury she gave a statement to Mississippi law enforcement authorities and was subsequently indicted for accessory to murder, after the fact. The indictment against Richardson was dropped with prejudice in exchange for her agreement to testify truthfully in Slaughter's prosecution. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶26 (Feb. 14, 2002). Although Richardson had an agreement with the Federal Authorities she was not being investigated by the federal government and was not facing federal charges.

Richardson testified before the State Court jury that she had been indicted as an accessory to murder and that the charge was dropped in exchange for statements and cooperation in the investigation of Slaughter. *Slaughter v. Mississippi*, 2000-KA-01533-SCT, ¶39 (Feb. 14, 2002).

As noted by the Mississippi Supreme Court, Richardson was the key witness for the State. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶43 (Feb. 14, 2002). In the trial court's view her agreement with the State was all the jury was entitled to know.

As to Regina Richardson defense counsel argued that they only way to defend against the testimony of Regina Richardson was if they were allowed to tell the "whole story". (Tr. 149) The Court was asked to revisit the order in limine concerning the Federal Grand Jury investigation and it declined. (Tr. 154) The Court stated that the character and credibility of the witnesses would be subject to cross-examination. (Tr. 154-155) Slaughter's counsel noted that the Federal Grand Jury information was import to "explain why, number one, the witnesses that were identified by the State would make such a statement; secondly, how they could misunderstand such a statement; and three, what -- the res gestae of what was going on. (Tr. 155) The Court ordered that Slaughter's counsel could not "go into that." (Tr. 155)

Prior to the direct examination of Regina Richardson Slaughter's counsel asked to make a proffer of her testimony. The purpose of the proffer of Regina Richardson was to give a full picture of her motive and reasoning behind her testimony and that he needed her testimony concerning the federal investigation. (Tr. 313) The Court postponed the proffer until after the direct examination. (Tr. 314)

Following the proffer of Mrs. Richardson's testimony (Tr. 342-381) counsel for Slaughter argued that clearly her testimony before the Federal Grand Jury involved only testimony concerning the murder and the things she was saying against Jodon Slaughter. (Tr. 355) Richardson was being hounded by the Gulfport Police and her sister was about to be arrested so she called the U.S. Government and entered into an agreement that what she said could not be used against her. Then the State of Mississippi indicted her. This gave the State an opportunity to squeeze out of Richardson the same fabricated testimony in exchange for dismissing the charges against her. (Tr. 356-357) As defense counsel noted, "It goes to her motive. It goes to her--anything that touches on the motive of a witness, especially when it was spelled out in black and white should be relevant." (Tr. 357) This testimony Defense counsel argued was relevant because it shows the motive, reason and opportunity for concocting the story against Jodon Slaughter. (Tr. 360-361) The Court felt that the fact that the jury knew that the indictment against Richardson was dismissed with prejudice was sufficient. (Tr. 362)

Richardson, Murray, Seldon and Dugan all provided information to the Federal Grand Jury regarding Slaughter's alleged involvement in the murder of Reynolds. This information was used to build a murder case against Slaughter by the State of Mississippi.

The State alleged that Richardson drove Slaughter and Ogletree to and from the shooting in her car, and Ogletree, Stepney, and Richardson helped conceal the evidence of the shooting after the fact. (T. 135, 140) Regina Richardson was the State's key witness. She

was the only alleged eye witness to testify that identified Slaughter as the shooter. Three residents of River 10 Apartments testified to hearing the gunshot and described the assailant as a man but were unable to identify him. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶2-4 (Feb. 14, 2002).

Police officers investigated the shooting and collected the physical evidence. Based on information from Regina Richardson after her testimony before the Federal Grand Jury, a gun was recovered from a storm drain on August 25, 1998. State Crime Lab personnel testified that the gun was a possible source of the bullet fragments and projectiles found at the scene, but could not be positively included or excluded as having been discharged. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶5, 27 (Feb. 14, 2002).

At the trial Regina Richardson testified that on April 29th she made plans to go out with Slaughter and two other people when she got off work at 7:00 p.m. on April 29, 1998. By about 9:00 she had met Slaughter, Ken Ogletree and Tracy Stepney in one on the hotel rooms where they made plans to go out. Richardson testified that she drove Slaughter and Ogletree to River 10 Apartments to pick up a truck. Slaughter spoke two or three times to Reynolds while they were en route, telling him that he was still at the casino and that Reynolds should bring his vehicle to the casino. He told Reynolds to leave the keys with the valet and that Screvens would give him a ride home. Slaughter imparted the same information to Screvens. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶13-14, 16-17 (Feb. 14, 2002).

Richardson testified that she drove around the apartment complex until Slaughter and Ogletree located the vehicle. She was told to park and turn off

her lights. Slaughter got out of the car and disappeared from her view. As she turned to speak to Ogletree she heard gunshots. She saw Slaughter at Reynold's car with a gun in his hand, a gun she had also seen at the hotel. According to Richardson Slaughter got back in the car and told them that he had killed Reynolds. Slaughter gave the gun to Ogletree and tried not to make a mess with the blood on his clothes. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶19-20 (Feb. 14, 2002).

According to Richardson they stopped at a railroad crossing on the way back to the Casino where Slaughter and Ogletree got out of the car, broke the gun into pieces and dropped them into a drain pipe. Back at the Casino Ogletree got out of the car and Slaughter instructed Richardson to drive him to her house. It was about 10:00 p.m. Slaughter put his bloody clothes into a trash bag, took a shower and put on a set of her workout clothes. Richardson called Stepney and gave her directions to the house. Stepney drove Ogletree to Richardson's house and brought Slaughter new clothes. Ogletree talked with Slaughter and took the trash bag with him when he left. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶20-23 (Feb. 14, 2002).

Richardson claimed that Slaughter told her what he wanted her to tell the police about where they had been and what they had been doing that night. Before Slaughter left, Richardson called her sister, Kelly Seldon, in Atlanta and told her what had really happened. About 1:00 a.m., Richardson drove Slaughter to a motel in the Moss Point/Pascagoula area where Ogletree and Stepney were waiting for him. The next morning the police questioned Richardson and she told them the story that Slaughter

had fabricated. Two days after the murder, Richardson went to Atlanta and met with Slaughter. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶24-25 (Feb. 14, 2002).

Richardson was the only eye-witness to the murder to testify however, she never provided any information to law enforcement inculpating Petitioner Slaughter until she learned that the federal authorities were about to arrest her sister. (Tr. 345-346) At that point she called the federal authorities to make a deal to "give" them Jodon Slaughter so they would leave her sister alone. (Tr. 348,-349) Richardson's testimony was bolstered by the trial testimony of Kelly Seldon, Lemuel Murray, and Linda Dugan all who received favors in exchange for information to support a conviction of Jodon Slaughter.

The Trial Court's ruling overlooked this fact and also overlooked that the Federal Grand Jury transcripts, all of which were submitted for the Court's review, did not merely touch upon the allegations that were the subject of the federal investigation but focused upon the murder case in Mississippi. Murray, Seldon and Dugan were never indicted in Mississippi, but they provided testimony with regard to the Mississippi murder under immunity granted to them by the Federal government.

The exclusion of the testimony of these witness was raised by defense counsel in his motion for a new trial and was assigned on appeal as his first assignment of error. It was raised again in the motion for rehearing before the Mississippi Supreme Court.

Jury Instructions

The Court refused to allow Slaughter's requested jury instruction D-5 and D-unnumbered pertaining to a great care and caution instruction.

The instruction D-5 read:

> The testimony of an alleged accomplice is to be considered and weighed with great care and caution and suspicion. You may give it such weight and credit as you deem it is entitled.
>
> (CP 632)

Jury instruction D-unnumbered reads:

> The testimony of one who provides evidence against the defendant for immunity from punishment must always be examined and weighed by the jury with greater care and caution than the testimony of ordinary witnesses. You the jury should consider and weigh such testimony with great care and caution and suspicion. You may give it such weight and credit as you deem it is entitled.
>
> (CP 630)

Both instructions were refused. (RE 126-129; 28, 29, T 667-670; CP 630, 32) Slaughter's position is that Richardson was in effect charged as an accomplice to the murder. In addition the care and caution instruction should also apply to Murray, Seldon and Dugan.

The Trial Court refused D-5 based on the fact that Richardson was indicted as an accessory after the fact and not as an accomplice. (Tr. 667-670) Instructing the jury regarding Richardson's testimony should not rest solely on her classification as a co-defendant or accomplice but on whether she received some "favor or benefit" for her testimony. She did and the jury should have been instructed regarding her testimony.

The other instruction was refused based on the Trial Court's refusal to allow evidence of the immunity agreements and the Federal Grand Jury to be heard by the jury.

REASONS FOR GRANTING THE WRIT

Limitation on Cross-Examination

The rulings of the trial court and the Mississippi Supreme Court are in conflict with the U.S. Supreme Court cases dealing with the constitutional guarantee of a meaningful opportunity to present a complete defense.

The Mississippi Supreme Court held:

> As to the federal immunity agreements for the witnesses, no promise was made not to prosecute the witnesses in regard to the murder or Reynolds. The federal case did not focus on Reynold's murder, but on other alleged federal crimes. Richardson, the key witness of the State of Mississippi in the Reynolds murder trial was offered complete immunity by the prosecution in exchange for truthful testimony. The immunity agreement between the State and Richardson was before

> the jury. Therefore, the issue is without merit.
>
> *Slaughter v. Mississippi*, 2000-KA-01533-SCT, ¶43 Feb. 14, 2000; reh denied 5/23/2000(Miss 2002)

It was critical to the Petitioner's defense that he be allowed to cross-examine Richardson regarding a possible motive to lie, whether out of "fear or favor". When the trial court denied his right to fully cross-examine her it deprived him of his Sixth Amendment right to confront witnesses against him. *See Olden v. Kentucky*, 488 U.S. 227, 231 (1988)

The Sixth Amendment right "to be confronted with the witnesses against him" is incorporated in the Fourteenth Amendment and available in state proceedings, *Pointer v. Texas*, 380 U.S. 400 (1965), and includes the right to conduct reasonable cross-examination. *Davis v. Alaska*, 415 U.S. 308, 315-316 (1974). Confrontation means more than being allowed to confront the witness physically. "Our cases construing the [confrontation] clause hold that a primary interest secured by it is the right of cross-examination." *Douglas v. Alabama*, 380 U.S. 415, 418 (1965). Professor Wigmore stated:

> The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination. The opponent demands confrontation, not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross-examination, which cannot be had except by the direct and personal

> putting of questions and obtaining immediate answers." 5 J. Wigmore, Evidence 1395, p. 123 (3d ed. 1940).

Whether rooted directly in the Due Process clause of the Fourteenth Amendment, *Chambers v. Mississippi*, 410 U.S. 284 (1973), or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, *Washington v. Texas*, 388 U.S. 14, 23 (1967); *Davis v. Alaska*, 415 U.S. 308 (1974), the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." *Strickland v. Washington*, 466 U.S. 668, 684-685 (1984) ("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basis elements of a fair trial largely through the several provisions of the Sixth Amendment". An essential component of procedural fairness is an opportunity to be heard. *In re Oliver*, 333 U.S. 257, 273 (1948); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

In *Chambers v. Mississippi*, 410 U.S. 284 (1973) this Court noted:

> The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The right to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process. Mr. Justice Black, writing for the Court in *In re Oliver*, 333 U.S. 257, 273 (1948), identified these rights as among the minimum essentials of a fair trial:

> A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in court - are basic in our system of jurisprudence; and those rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel.
>
> 410 U.S. 284, 295

These rights include the right of cross examination which is "implicit in the constitutional right of confrontation, and helps assure the "accuracy of the truth-determining process." *Dutton v. Evans*, 400 U.S. 74, 89 (1970). *Id.* Jodon Slaughter was deprived of his right to a full cross examination of the witnesses against him. As this Court in *Chambers* noted:

> While the right is not absolute and may have to bow to other legitimate interests in the criminal trial process, any serious limitation on that right calls into question the ultimate integrity of the fact-finding process and requires that the competing interest be closely examined. *Berger v. California*, 393 U.S. 314, 315 (1969)
>
> 410 U.S. 284, 295-296

"[T]he exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." *Davis v. Alaska*, 415 U.S. 308, 316-317 (1974); *see also*

Delaware v. Van Arsdall, 475 U.S. 673, 678 (1986). Here the jury was not told that the testimony of Murray, Dugan, and Seldon with regard to Slaughter arose out of their appearances before a Federal Grand Jury. They were questioned about the Mississippi shooting by the Federal government under a promise of use immunity. They all knew that the "target" was Jodon Slaughter and they did whatever they could to help the government (State or Federal) get him instead of them. Regina Richardson told her "trial" version of the facts for the first time only after she became concerned that her sister would be arrested by federal authorities because of her association with Jodon Slaughter. (Tr. 348) Whether this jury would have been influenced by knowing these things requires some speculation. But regardless the jury was entitled to have the benefit of a full cross-examination of Regina Richardson as to her possible motivation to lie. And they were entitled to know that the testimony of Dugan, Murray and Seldon was first obtained under a grant of use immunity in front of a grand jury. See *Davis*, 415 U.S. at 317; *Alford v. United States*, 282 U.S. 687, 691 (1931) (holding that where witness was in prosecutor's custody due to pending charges, petitioner was "entitled to show by cross-examination that his testimony was affected *by fear or favor*")

In *Davis v. Alaska* 415 U.S. 308 (1974); the court observed that subject to "the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation. . ., the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness." *Id.*, at 316. In *Davis* the court pointed out that "the exposure of a witness' motivation in testifying is a proper and important function of the

constitutionally protected right of cross-examination." *Id.*, at 316-317. Richardson's proffer makes it clear that she was motivated to offer up Slaughter to the Federal Grand Jury by fear for her sister. The jury was entitled to this information and was also entitled to know that Seldon, Murray and Dugan initially provided testimony against Slaughter in exchange for "favors" from the Federal authorities.

THIS WAS NOT HARMLESS ERROR

In *Delaware v. Van Arsdall* 475 U.S. 673 (1986) this Court held that the denial of a defendant's opportunity to impeach a witness for bias, like other Confrontation clause errors, is subject to the *Chapman v. California*, 386 U.S. 18 (1967) harmless-error analysis. The constitutional dimension of the right to full cross-examination increases in sensitivity in direct proportion to witness's importance to state's case. The harmless error analysis applies to confrontation clause cases. See *Van Arsdall*, 475 U.S. at 680, 684.

> The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony

of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

Chapman v. California, 386 U.S. 18 (1967)

HARMLESS ERROR FACTORS

(1) The importance of the witness's testimony in the prosecution's case.

Regina Richardson was the key witness for the State of Mississippi. She was the only eyewitness to testify that Slaughter shot Reynolds. This factor supports Petitioner's position that the Court's refusal to allow him to explore the motives of the Richardson and the other witnesses was not harmless error. Richardson's version of the events of April 29 prior to her contact with the Federal authorities had not incriminated Jodon Slaughter. It was not until her sister was threatened with arrest in the federal investigation did Richardson incriminate Slaughter. This motive, to save her sister from federal charges, should have been placed before the jury so that they might fairly judge her credibility.

(2) Whether the testimony was cumulative.

Richardson's testimony was not cumulative, it was the crux of the prosecution's case. Murray, Dugan and Seldon was not as important to the prosecution but their testimony was not cumulative either, each told of statements allegedly made by Slaughter, statements that might have been explained except for Regina Richardson's testimony. This factor supports Petitioner's position that the Court's refusal to allow

him to explore the witnesses motives and thereby their credibility was not harmless error.

(3) The presence or absence of evidence corroborating or contradicting the testimony of the witness on material points.

There were no corroborating witnesses to the shooting at River 10 Apartments. The gun recovered by the State could not be positively identified as the weapon used to kill Reynolds. The absence of corroborating evidence supports petitioner's position that the trial court committed reversible error by refusing to allow him to cross-examine Richardson and the other with regard to their motives for testifying as they did. This factor supports Petitioner's position that the Court's refusal to allow him to present to the jury the immunity agreements of the witnesses and thereby their motives was not harmless error.

(4) The extent of the actual cross-examination.

Cross-examination as allowed was not extensive enough to counter the failure of the trial court to allow cross-examination regarding the fact that these witnesses were called before a Federal Grand Jury, were given immunity and had motives to "give up" Jodon Slaughter all of which could affect their credibility before the jury.

(5) The overall strength of the State's case.

The State's case rose and fell with Regina Richardson, propped up with the testimony of Murray, Dugan and Seldon. This factor supports Petitioner's position that the Court's refusal to allow

him to explore the witnesses' motives credibility was not harmless error.

It is well established that "the confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). The Confrontation Clause is generally satisfied "when the defense is given full and fair opportunity to probe and expose these infirmities through cross-examination, thereby calling to the attention of the fact finder the reasons for giving scant weight to the witness' testimony." *Id.* at 22. Slaughter was not allowed to do this.

Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Cross-examination may reveal possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is "always relevant as discrediting the witness and affecting the weight of his testimony." 3A J. Wigmore, Evidence 940, p. 775 (Chadbourn rev. 1970).

The Supreme Court has recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. *Davis v. Alaska*, 415 U.S. 308, 317 (1974) The jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on Richardson, Murray, Seldon and Dugan's testimony which provided "a crucial link in

the proof . . . of petitioner's act." *Douglas v. Alabama,* 380 U.S., at 419.

The accuracy and truthfulness of Richardson's testimony were key elements in the State's case against petitioner. The claim of bias which the defense sought to develop was admissible to afford a basis for an inference of undue pressure because of Richardson's concern about her sister. While the jury was allowed to know that Richardson had made a deal with the State authorities in exchange for her testimony, they were not allowed to know that the trial version of her testimony was first placed before the Federal Grand Jury in an effort to save her sister. On these facts it seems clear that defense counsel should have been permitted to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness. Petitioner Slaughter was thus denied the right of effective cross-examination.

"An abuse of discretion has occurred if the jury is left without 'sufficient information concerning formative events to make a "discriminating appraisal" of a witness's motives and bias.'" *United States v. Twomey* , 806 F.2d 1136, 1140 (1st Cir. 1986) (quoting *United States v. Campbell* , 426 F.2d 547, 550 (2d Cir. 1970)).

JURY INSTRUCTIONS

The Court refused to allow Slaughter's requested jury instruction D-5 and D-unnumbered, his care and caution instructions.

The instruction D-5 read:

> The testimony of an alleged accomplice is to be considered and weighed with great care and caution and suspicion. You may give it such weight and credit as you deem it is entitled.
>
> (CP 632)

Jury instruction D-unnumbered reads:

> The testimony of one who provides evidence against the defendant for immunity from punishment must always be examined and weighed by the jury with greater care and caution than the testimony of ordinary witnesses. You the jury should consider and weigh such testimony with great care and caution and suspicion. You may give it such weight and credit as you deem it is entitled.
>
> (CP 630)

Both instructions were refused. (RE 126-129; 28, 29, T 667-670; CP 630, 32)

Slaughter's position is that care and caution instructions should have been given with regard to Richardson, Murray, Seldon and Dugan. Since the trial court excluded testimony regarding the immunity agreements it did not allow the instructions with regard to Murray, Seldon and Dugan. The Trial Court refused D-5 based on the fact that Richardson was indicted as an accessory after the fact and not as an accomplice. Instructing the jury regarding

Richardson's testimony should not rest solely on her classification as a co-defendant or accomplice but on whether she received some "favor or benefit" for her testimony. She did and the jury should have been instructed regarding her testimony.

Four witnesses, Murray, Seldon, Dugan, and Richardson gave their direct testimony against Slaughter's alleged involvement with the shooting in exchange for valuable considerations - immunity, freedom from jail, and vicarious freedom for one's sister. Cautionary instructions have been approved by many state and federal courts, *See i.e. United States v. D'Antignac*, 628 F.2d 428 (5th Cir. 1980) cert denied, 450 U.S. 967 (1981); *Wilkerson v. United States*, 591 Fed.2d 1221 (5th Cir. 1979). It has been held to be plain error to fail to give such instructions in a compensated witness case. *United States v. Bradfield*, 103 F.3d 1207, 1216-1217 (5th Cir. 1997) Mississippi case law also recognizes cautionary instructions should be give. *McNeal v. State*, 551 So.2d 151 (Miss. 1989) and *Sherrel v. State*, 622 So.2d 1233 (Miss. 1993) under the right circumstances. Here the trial court as well as the appellate court denied the defendants requested instructions.

As part of the Sixth Amendment the accused in a criminal prosecution shall enjoy the right to a speedy and public trial by an impartial jury." *Sullivan v. Louisiana*, 508 U.S. 275, 278 (1993) It is an integral part of a fair trial that the jury be fully and correctly instructed.. The Chapman harmless error standard recognizes that "certain constitutional errors, no less than other errors, may have been "harmless" in terms of their effect on the fact-finding process at trial. *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986). The question is "whether the guilty verdict actually

rendered in this trial was surely unatrributable to the error." 508 U.S. 275, 279. In the absence of proper instructions, the court can only speculate what a reasonable jury would have done. And when it does that, "the wrong entity judge[s] the defendant guilty." *Rose v. Clark*, 478 U.S. 570, 578 (1986).

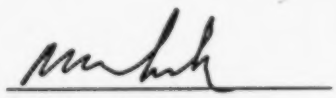
Considering the fact that Richardson gave contradictory statements, and allegedly came forward only on the eve of her sister's arrest, a cautionary instruction should have been given. The State of Mississippi in its brief before the Mississippi Supreme Court conceded that the refusal to give the cautionary instruction as to Richardson was error, but denied that it was reversible error since the defendant was not prejudiced thereby. (Relying on *Knight v. State*, 57 So.2d 161 (Miss. 1952) On appeal the State argued that this was because her testimony was corroborated in pertinent respects by other witnesses and she was subject to cross-examination. The truth is Richardson was the only eyewitness who could purportedly identify Slaughter as the shooter. Richardson's first statements to the police exculpated Slaughter. The corroborating witnesses were the ones who received immunity agreements which were not disclosed to the jury. The failure to grant cautionary instructions as to all of the witnesses who had previously testified regarding the events of April 29, 1998 was reversible error. The failure to give the instructions effectively deprived Jodon Slaughter of a fair trial by an impartial jury under correct instructions of law.

CONCLUSION

The rulings set out in this Petition clearly show the Trial Court and Mississippi Supreme Court erred in their rulings regarding the proffered testimony and

the jury instructions. These ruling were in direct contradiction of the holdings of the United States Supreme Court and the in derogation of the rights provided to Jodon Slaughter through the Sixth and Fourteenth Amendments to the United States Constitution. This Petition should be granted.

Respectfully submitted,



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APPENDIX

1. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶5 (Feb. 14, 2002).

2. Trial Court rulings on admission of testimony.

3. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶5 (Feb. 14, 2002). Order denying rehearing (May 23, 2002)

4. Trial Court ruling on jury instructions.

No.

In The
Supreme Court of the United States

October Term 2001

Jodon Antonio Slaughter
Petitioner

v.

The State of Mississippi
Respondent

On Petition for Writ of Certiorari
To The Mississippi Supreme Court

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX

1. *Slaughter v. Mississippi,* 2000-KA-01533-SCT,¶5 (Feb. 14, 2002).

IN THE SUPREME COURT OF MISSISSIPPI
NO. 2000-KA-01533-SCT
JODON ANTONIO SLAUGHTER
v.
STATE OF MISSISSIPPI

DATE OF JUDGMENT: 2/11/2000
TRIAL JUDGE: HON. JERRY O. TERRY, SR.
APPEALED FROM : HARRISON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: MICHAEL W. CROSBY
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL BY: DEWITT T. ALLRED
DISTRICT ATTORNEY: CONO A. CARANNA, II
NATURE OF THE CASE: CRIMINAL - FELONY DISPOSITION: AFFIRMED - 02/14/2002 MOTION FOR REHEARING FILED:3/25/2002; denied 5/23/2002
MANDATE ISSUED:5/30/2002

Before PITTMAN, C.J., EASLEY and GRAVES, JJ.

EASLEY, JUSTICE, FOR THE COURT:

¶1. Jodon Antonio Slaughter (Slaughter) was found guilty of the murder of Kelvin Reynolds (Reynolds) by a jury in the Circuit Court of Harrison County, First Judicial District. A mandatory sentence of life in prison was imposed on Slaughter. The trial court denied Slaughter's motion for judgment notwithstanding the verdict or alternatively, motion for a new trial. Slaughter now appeals to this Court.

FACTS

¶2. At trial, a number of residents at the River 10 apartment complex in Gulfport, Mississippi, testified about what they observed on April 29, 1998. Sharon Patton (Patton), a resident of Apartment 70, was in the living room of her upstairs apartment when she heard an argument and a noise outside that "sounded like a

firecracker." When she looked outside, directly below her balcony, she saw two men at a Ford Explorer. One of the men was sitting inside it, "hunched over" on the passenger side, and "the other man was reaching in with a gun." She stated that she saw "something shiny" that it looked like a "gun," and ran back inside. She then heard two or three more shots. She did not see the two men clearly enough to describe them.

¶3. Ronald Lawrence (Lawrence), a resident of Apartment 69, was on his balcony at about 9:30 p.m., when he became aware of an apparent argument or fight between two men. He saw a gun that was described as "nickel-plated," and he saw a "silvery flash." He heard a bang and ran inside. He testified that he may have heard a few more shots. Lawrence recognized the victim, who had been there at the apartment complex for a few weeks, but he was unable to see the other man clearly enough to provide a description.

¶4. Alicia Mitchell (Mitchell), a resident of Apartment 53, was returning home from a shopping trip at about 9:30 p.m. that night. She heard a sound like a gunshot as she backed into a parking space approximately "five or more car lengths" from the Explorer. She saw what appeared to be "a person leaning over someone else, leaning into a vehicle." There was another couple of shots, and then "they" raced up, got into another parked car, and sped out in front of her car as they left the complex. She described the car that passed directly in front of her as "a teal blue colored car, a Mustang style." She went to the Explorer,

where she confirmed her assumption that someone has been shot.

¶5. A number of Gulfport police personnel participated in the case. Officer Adam Cooper (Officer Cooper) responded to a "shots fired" call and found the deceased in the Ford Explorer. Officer Charles Horne (Officer Horne) collected shell-casings from an automatic weapon that night at the scene of the shooting. Subsequently, he recovered a projectile which a resident of the apartments had found. Officer Horne also identified fragments of metal and fragments of lead projectiles recovered during the autopsy of the victim and some cell phones and beepers recovered at the scene of the shooting. Detective Kevin Raymond (Detective Raymond) collected evidence from the interior of Reynolds's van, including three beepers, two of which were found on the center console and one of which was found in the front passenger door compartment. Detective Gregory Herman (Detective Herman) found the gun in the storm drain on August 25, 1998. Detective Rosario Ing (Detective Ing) reviewed a videotape of the Grand Casino's valet parking area taken at 9:08 p.m. on the night of the murder and identified Slaughter.

¶6. Valerie Seldon (Valerie) was an employee at the Grand Casino in Gulfport and a resident of Apartment 72. At the time prior to the shooting, Reynolds had been staying with her for two or three weeks while in the process of moving to the coast from Atlanta, Georgia, to start a pager and cellular phone repair business. Valerie and Reynolds became

acquainted at the casino. She also met Slaughter at the same time as Reynolds.

¶7. During the day of April 29th, Reynolds was at the apartment, where Valerie observed him "constantly on the phone," "antsy" and "nervous." To her personal knowledge, he spoke with Slaughter several times during the day, and, to her personal knowledge, Reynolds knew that Slaughter was coming to Gulfport. Slaughter also wanted to use Reynolds's truck. She last saw Reynolds between 6:30 p.m. and 8:00 p.m., when she fell asleep. Valerie first learned of Reynolds's death when the police came to her apartment later that night.

¶8. Darryl Screven (Screven), a casino host at the Grand Casino, became acquainted with Slaughter sometime during 1996 or 1997, in connection with his casino employment. He met Reynolds during a trip to Atlanta to meet with Slaughter.

¶9. In April of 1998, Slaughter called Screven and informed him that he would be coming to Gulfport with Ken Ogletree (Ogleree) to patronize the Grand Casino. Screven met Slaughter, Ogletree and Tracy Stepney (Stepney) at the casino and had lunch with them on Wednesday, the day of the murder.

¶10. At about 7:00 that evening, Screven received a phone call from Reynolds, who said that Slaughter wanted to go to a shopping mall. However, only Screvens and Stepney went to the mall and returned to the casino at about 8:45 p.m.

¶11. Screven left to go home. On the way, he received a "succession of beeps" from Slaughter and Reynolds. He stopped and called Slaughter, who asked him to come back to the casino. An arrangement had been made for Reynolds to bring his vehicle to the casino so that Slaughter could use it to go to New Orleans. Reynolds would then need a ride from the casino back to Valerie's apartment. Screven called Reynolds, who told him "basically the same thing." Screven returned to the casino, but Slaughter had departed. He called Valerie's apartment to find out if Reynolds was coming to the casino. When Screven spoke with Valerie, she told him "nothing concrete." He waited at the casino about ten minutes and then went home.

¶12. Screven learned later that night that Reynolds had been killed. Subsequently Screven was questioned by the police. The next morning, Slaughter called him to talk about checking out of the casino's hotel. Screven told Slaughter about Reynolds's "demise" and "that the police were looking for Slaughter."

¶13. Caroline Patton (Patton), a valet at Grand Casino, was working on the night of April 29, 1998. She knew Regina Richardson (Richardson) and was familiar with her car, a green Mustang. At about 9:00 p.m. or 9:15 p.m., that night, she saw Richardson at the casino with two men and a woman. Screven called, and Patton gave the phone to one of the men with Richardson, who spoke briefly with Screven. The car was brought around, and Patton saw the man who had talked on the phone to Screven get into Richardson's green Mustang

and drive away. She could not say whether or not all three of the people got into Richardson's car. Screven called again, and she told him that they had just left.

¶14. Richardson, a dealer at the Grand Casino, become acquainted with Slaughter through her employment. She did not know Reynolds. She saw Slaughter at the casino early in the afternoon of April 29th, and they made plans at that time to go to New Orleans that night with two other people when she got off work. When she got off work at 7:00 p.m., she went home and changed clothes, got her green Mustang, and returned to the casino, where Slaughter and Ogletree were still gambling. By about 9:00 p.m., she met Slaughter, Ogletree and Stepney in one of the hotel rooms, and they made plans to go out for the evening. Richardson had to take Slaughter to pick up this truck before going out for the evening. Since Richardson worked early the next day, they agreed that the four of them would go out somewhere locally afterwards instead of going to New Orleans.

¶15. During the evening, both in the casino and in the hotel room, Richardson was present when Slaughter talked on the phone numerous time with Reynolds. In the hotel room, Richardson saw Slaughter with a gun and put the holstered gun on his belt by his hip. It was Richardson's understanding from her conversations with Slaughter that he needed to pick up his friend's truck. Stepney asked Richardson whether she knew where Valerie lived. Richardson knew the apartment complex but she found Valerie's exact address by calling information.

¶16. Downstairs, Stepney changed her mind about going with them and went back into the hotel. Richardson drove Slaughter and Ogletree to the River 10 Apartments in her car.

¶17. En route, Slaughter, who was in the front passenger seat, spoke on the telephone two or three times with Reynolds. At the entrance to the apartment complex, Slaughter told Reynolds on the telephone that he was still at the casino. Slaughter told Reynolds to bring his vehicle to the casino and leave the keys with the valet. Slaughter told Reynolds that Screvens would give Reynolds a ride home. Slaughter also had spoken on the phone with Screvens and also had "led [Screvens] to believe that he was still at the casino" and that Reynolds would be delivering the vehicle to the casino.

¶18. Richardson drove around the apartment complex until Slaughter and Ogletree located the vehicle. She drove past the vehicle, a Ford Explorer, to the end of the parking area and was told to turn off her lights. She turned her car around and parked about one car past the Ford Explorer. Before she was completely stopped, Slaughter, without saying anything, got out of the car. Richardson did not know Reynolds, but she saw a man standing outside a ground-floor apartment.

¶19. Slaughter disappeared from Richardson's view. She parked the car, sat there for a couple of seconds, and turned to speak to Ogletree in the back seat. As she did so, she heard gunshots. She looked out and saw Slaughter at Reynolds's Explorer with the

same "silver, big, shiny gun" in his hand that she had seen at the hotel.

¶20. She put the car in reverse, intending to flee, but Ogletree's presence indicated to her that she "could not leave," that she "had 'trouble' in [her] back seat." So she stopped, and Slaughter got back into the car. Richardson testified that "there was conversation that went sort of like - - and I'm paraphrasing: 'I killed him. I shot the m-----f-----.'" Slaughter gave the gun to Ogletree and tried not to made a mess with the blood on his clothes.

¶21. While driving back to the Grand Casino, they were stopped at a railroad crossing. Slaughter and Ogletree got out of the car. Slaughter then broke the gun into pieces and dropped the pieces into a drain pipe.

¶22. Back at the Grand Casino, Ogletree got out of the car, and Slaughter instructed Richardson to drive him to her house. They got to her house about 10:00 p.m. Slaughter put his bloodied clothes into a trash bag, took a shower, and put on a set of Richardson's workout clothes.

¶23. Richardson gave Stepney directions to the house on the telephone, and Stepney drove Ogletree over to Richardson's house. Ogletree brought Slaughter some new clothes, talked with Slaughter and then took the trash bag with him when he left.

¶24. Slaughter indicated that Ogletree was "supposed to go and discard the garments." He also

told Richardson the story he wanted her tell the police about where they had been and what they had been doing that night. While Slaughter was still at the house, Richardson called her sister, Kelly Seldon (Seldon), in Atlanta and told her what had really happened. At about 1:00 a.m., Richardson drove Slaughter to a motel in the Moss Point/Pascagoula area where Ogletree and Stepney were waiting for him. Slaughter got out of the car and told Richardson to "keep it together," and Richardson drove home.

¶25. At work the next day, Richardson was picked up by the police and questioned. Thereafter, she had a telephone conversation with Slaughter. When she was questioned by the police, Richardson told them the story that Slaughter had fabricated. About two days after the murder, Richardson went to Atlanta and met with Slaughter.

¶26. Richardson was indicted for accessory to murder, after the fact, and she subsequently told the police what actually had happened that night and told them the location of the gun in the drain. The indictment was dropped with prejudice in exchange for her agreement to testify truthfully in the prosecution of Slaughter.

¶27. Crime Lab Technician Steve Byrd (Byrd), a forensic firearms examiner, test-fired the gun submitted to him for purposes of comparison with the bullets and shell-casings. He described the gun has having a "stainless steel finish." In Byrd's opinion, the gun's class characteristics were consistent with its having been the gun that fired the projectiles. He

considered the gun as a possible source for discharging the components; however, the particular components could not be positively included or excluded as having been discharged. Byrd could not state that the gun was the only source to discharge the components. Byrd testified that the gun's rusted condition could have had "an adverse effect on known test standards."

¶28. Richardson's roommate, Rhonda Reyna (Reyna), testified that she, her boyfriend, and Richardson's daughter came back to the apartment at about 10:00 p.m. after seeing a movie. Richardson and Slaughter were at the apartment. Later, another man came to the apartment. Richardson asked Reyna to hand her a trash bag that was in the living room. The second man left the apartment soon afterwards, but she did not see him leave.

¶29. Lemuel Murray (Murray) and Slaughter both worked for a car dealership in Atlanta. About ten days to two weeks prior to April 29, 1998, Murray and Slaughter spoke on the telephone and, at Slaughter's request, Murray went to Slaughter's home to talk with him. Slaughter told Murray that Reynolds "was a f—— rat, and he had people coming up from Miami bringing him a silencer, and he was going to blow Kelvin Reynolds's f—— head off."

¶30. The next time Murray spoke with Slaughter was on April 30, 1998, the day after the murder of Reynolds. Slaughter called Murray to tell him that he had just gotten back from Mississippi and that he was going to come by the car dealership to talk with Murray. When Slaughter came over there later, he

asked Murray if he had heard what had happened to Reynolds last night. Murray replied that he had not. Slaughter told him that "the word was on the street that [I] had killed Kelvin Reynolds." Slaughter then talked on the phone with Ogletree, and, as he was leaving the dealership he said to Murray, "Do you think they got the message?"

¶31. Linda Dugan (Dugan), a resident of Georgia and Slaughter's former spouse, knew Reynolds for less than a year. Prior to his departure from Georgia on or about April 29th, Slaughter invited Dugan to go to Gulfport with him, but she did not go with him. On the night of April 29-30, 1998, Slaughter called Dugan and stated he was in Mississippi. She asked him if he was "taking care of business", and he said, "Yes, you'll read about it [in the paper]." She did not know at the time what his "business" in Mississippi was, except that he was going there to gamble. Later on the morning of the 30th, at about 10:00 a.m., Slaughter called her again and asked her if she had heard what had happened to Reynolds.

¶32. Richardson's sister, Seldon, stated that on the night of the murder, Richardson called and told her about the murder. Seldon did not know Reynolds. She had met Slaughter on an occasion when they both were gambling at the Grand Casino in Gulfport, but the first time she "actually met him eye to eye" was when he showed up at her house a day or two after Reynolds was killed. Richardson was at Seldon's house at the time, and Richardson left Seldon's house with Slaughter. Thereafter, Seldon became personally acquainted with Slaughter and he stated that Reynolds

was "his best friend and he hated what he had to do to him."

STATEMENT OF THE ISSUES

I. Whether the trial court erred by refusing to allow disclosure to the jury of evidence of federal prosecution immunity agreements.

II. Whether the prosecutor's opening and closing arguments were prejudicial.

III. Whether the trial court erred by refusing to allow a "great care and caution" jury instruction.

DISCUSSION

I. Immunity Agreements

¶33. Slaughter first complains that the trial court erred by refusing to allow him to disclose federal immunity agreements to the jury for material witnesses. The specific witnesses in question are Murray, Seldon, Dugan and Richardson. The State of Mississippi also had an immunity agreement with Richardson in regard to the murder of Reynolds.

¶34. This Court has held that "reversible error results when evidence of an immunity agreement between the State and its key witness is removed from the jury's consideration." *Morgan v. State*, 703 So.2d 832, 840 (Miss.1997)(citing *King v. State*, 363 So.2d 269, 274 (Miss.1978); *Suan v. State*, 511 So.2d 144, 146-48 (Miss.1987); *Foster v. State*, 508 So.2d 1111, 1112-15 (Miss.1987); *Malone v. State*, 486 So.2d 367, 367-69

(Miss.1986); *Fuselier v. State*, 468 So.2d 45, 51-52 (Miss.1985)).

¶35. Slaughter claims that witnesses, Murray, Seldon, Dugan and Richardson, testified to having immunity agreements and their testimony should have been disclosed to the jury. (FN1)

¶36. Murray testified at trial. In a proffer before the judge and outside the presence of the jury, Murray testified that he received use immunity from the federal government concerning alleged crimes involving Slaughter and Reynolds. The trial judge excluded this information stating that the federal immunity given Murray had nothing to do with the prosecution of Slaughter in the murder case. The trial judge stood by this ruling and excluded the testimony as to the immunity pursuant to M.R.E. 403.

¶37. At trial, defense counsel maintained that Seldon had a use immunity agreement with the federal government as indicated in federal grand jury testimony. Further, Slaughter cites federal jury testimony that indicates Seldon had a cooperation /use immunity agreement.

¶38. The State stipulated, based on federal grand jury testimony, that Dugan had entered into an immunity agreement with the federal government. The type of immunity, use or transactional, was unknown to the State. The federal grand jury testimony, is also unclear as to the type of immunity granted to Dugan. "[A]n appellant is responsible for bringing to our attention and presenting to this court a record of trial

proceedings sufficient to undergird his assignments of error." *Winters v. State*, 473 So.2d 452, 457 (Miss. 1985).

¶39. Richardson testified in a proffer of evidence by Slaughter and outside the presence of the jury. On cross-examination by the State, she stated that her immunity from the federal government had nothing to do with this trial. Furthermore, the federal government was not investigating her nor was she facing federal charges. Subsequently, Richardson testified before the jury that she was indicted for accessory to murder by the State of Mississippi. In addition, she stated that in exchange for statements and cooperating in the investigation, the indictment against her was dropped with prejudice.

¶40. The trial judge did not allow any proffer or testimony from the federal case to go before the jury. Further, he stated that the immunity agreement for the accessory after the fact indictment was already before the jury.

¶41. Murray, Seldon and Dugan were never indicted in Mississippi in connection with the murder of Reynolds. Their immunity was solely with the federal government concerning other alleged crimes separate and distinct from the murder of Reynolds. From the record, it appears that they received use immunity agreements. While these witnesses may have known of some alleged involvement of Slaughter in the murder of Reynolds, there is no indication that the federal government offered any immunity from prosecution concerning the Reynolds murder.

¶42. Richardson also, apparently, had immunity from the federal government. However, she was also indicted by the State of Mississippi as an accessory after the fact for the murder of Reynolds. There was an immunity agreement between Richardson and the State of Mississippi. In exchange for truthful testimony and cooperation with the State of Mississippi in the prosecution of Slaughter for the murder of Reynolds, the State dropped the indictment with prejudice against Richardson. This was complete immunity from State prosecution. The immunity agreement between Richardson and the State of Mississippi was disclosed to the jury at trial.

¶43. As to the federal immunity agreements for the witnesses, no promise was made not to prosecute the witnesses in regard to the murder of Reynolds. The federal case did not focus on Reynolds's murder, but on other alleged federal crimes. Richardson, the key witness of the State of Mississippi in the Reynolds murder trial was offered complete immunity by the prosecution in exchange for truthful testimony. The immunity agreement between the State and Richardson was before the jury. Therefore, the issue is without merit.

II. Opening and closing statements

¶44. Slaughter next complains of prosecutorial misconduct in opening and closing statements.

Standard of Review

¶45. The standard of review that appellate courts must apply to lawyer misconduct during opening statements or closing arguments is whether the natural

and probable effect of the improper argument is to create unjust prejudice against the accused so as to result in a decision influenced by the prejudice so created. *Sheppard v. State*, 777 So.2d 659, 660 (Miss. 2000)(citing *Ormond v. State*, 599 So.2d 951, 961 (Miss.1992)).

A. Opening Statements

¶46. Slaughter claims that during opening statements the prosecution stated alleged facts that could not reasonably be expected to offer into evidence. The prosecutor stated the following in his opening statement:

> Remember, this happened April 29 of 1998. In August, I think the 25th, almost four months to the day, she told the police the rest of the story. And they went out on Railroad Street in the City of Gulfport and started checking storm drains. And guess what they found: A silver 9 millimeter pistol down in the storm drain with the handle busted off of it. Guess what else they found when they cleaned the rust off of it and got the solvents and cleaned it engraved on the barrel: "Walt Stepney, Jr." It's Tracy Stepney's daddy's gun she had given to Jodon to fix. It's still got "Stepney" written on it. (emphasis added).

Slaughter claims that there was no expectation that Tracy Stepney's father gave her the gun, nor that she had given the gun to Slaughter to "fix." Further, he

argues that at the first opportunity an objection was made and he moved for a mistrial.

¶47. A careful review of the record reveals that Slaughter made no contemporaneous objection during the prosecutor's opening statement. The first time Slaughter brought this issue to the trial court's attention was after the prosecution completed its opening statement and prior to the defense's opening statement. This Court held that "[i]f no contemporaneous objection is made, the error, if any, is waived." *Walker v. State*, 671 So.2d 581, 597 (Miss. 1995) (citing *Foster v. State*, 639 So.2d 1263, 1270 (Miss. 1994)). *Hill v. State*, 432 So.2d 427, 439 (Miss. 1983). An appellate court is under no obligation to review an assignment of error when an objection was not made or when an objection was untimely. *Carr v. State*, 655 So.2d 824, 832 (Miss. 1995). The contemporaneous objection rule is in place to enable the court to correct an error with proper instructions to the jury whenever possible. *Gray v. State*, 487 So.2d 1304, 1312 (Miss. 1986) (citing *Baker v. State*, 327 So.2d 288, 292-93 (Miss. 1976)).

¶48. The trial court addressed a number of issues at this time, including the prosecutor's opening statements. Slaughter simply requested a mistrial based on the prosecutor's comments. The trial court overruled the motion for mistrial. Clearly, Slaughter is procedurally barred for lack of a contemporaneous objection.

¶49. As to Slaughter's motion for mistrial, the standard of review for a denial of a motion for mistrial is abuse of discretion. *Spann v. State*, 771 So.2d 883, 889

(Miss. 2000). *Witherspoon v. State*, 441 So.2d 1363 (Miss. 1983). However, an objection is usually made before a motion for mistrial. The objection provides the trial court an opportunity to sustain an objection, and if requested admonish the jury to disregard the remark.

¶50. This Court has held that trial judge is in the best a position to determine if an alleged objectionable remark has a prejudicial effect. *Roundtree v. State*, 568 So.2d 1173, 1177 (Miss. 1990). "The judge is provided considerable discretion to determine whether the remark is so prejudicial that a mistrial should be declared." *Id.* at 1778. If serious and irreparable damage has not occurred, then the trial judge should direct the jury to disregard the remark. Id. at 1778.

¶51. In the case sub judice, Slaughter failed to contemporaneously object at trial to the statements made by the prosecution. As such, any error is waived. *Walker v. State*, 671 So.2d at 597.

¶52. Procedural bar aside, the opening statement by the prosecution was not unduly prejudicial. The trial court warned the jury prior to opening statements, stating "Opening statements are intended to assist you in understanding how the evidence will unfold from the witness stand itself. You must keep in mind that these opening statements are not in evidence. You are not to consider it as evidence. It's sort of an outline that you can follow." This Court has held that "[t]he purpose of an opening statement is to inform the jury what a party to the litigation expects the proof to show. Sometimes the proof does not follow the expectations of the party's attorney in opening statement and, if so,

that failure usually militates against the party." *Crenshaw v. State*, 513 So.2d 898, 900 (Miss. 1987).

¶53. The jury was properly instructed by the trial judge that opening statements are not evidence. As to the motion for mistrial, Slaughter failed to make a contemporaneous objection on which the judge could make a ruling. There was no error and no abuse of discretion by the trial judge in allowing the prosecution's opening statement to be heard by the jury and in overruling the motion for mistrial. B. Closing Statements

¶54. Slaughter also claims that the prosecutor again referred to matters not in evidence in closing argument. Slaughter cites the following excerpts from the prosecutor's closing argument:

> We also talked about the various rules of court; that it was not a function of you as jurors to rule on the various objections that would come form the attorneys. There is obviously -- even more than I think either Mr. Crosby or I could have anticipated -- but there is a wealth of information that's been developed over the last two years about this case. As is obvious to you now, a lot of it was not able to be given to you under these rules of court from either side.
>
> Mr. Crosby: Objection, Your Honor.

The Court: Don't comment on what was not given.

Mr. Crosby: And move for a mistrial with respect to his improper comment.

The Court: Overruled. The jury will disregard the argument that there was something that you did not hear.

Proceed.

Slaughter also cites the following closing excerpt:

I mean, what a coincidence. What a strange little turn of events. And I've got to tell you, as a prosecutor who needs some luck now and then, when you get this gun back there, you're going to have to turn the paper so you can see it. Manipulate it around right here. Right engraved on that barrel there: "Walt Stepney, Jr." What a little piece of coincidence that the girl, who at the time the defendant was beating this on the ground and stuffing it in the drainage pipe over on 42nd Avenue, the girl, whose father owns this gun, is at the Grand Casino packing everything in a duffel bag fixing to get the hell out of Gulfport and back to Atlanta. What a little funny turn of a coincidence they would have you

believe. Consistent with Regina's story, what she told the police four months later.

¶55. This Court has held that attorneys are allowed wide latitude in closing arguments. *Holly v. State*, 716 So.2d 979, 988 (Miss. 1998); *Wilcher v. State*, 697 So.2d 1087, 1010 (Miss. 1997). In addition, the "court should also be very careful in limiting free play of ideas, imagery, and personalities of counsel in their argument to [a] jury." *Ahmad v. State*, 603 So.2d 843, 846 (Miss. 1992). Any alleged improper comment must be viewed in context, taking the circumstances of the case into consideration. *Id.* The trial judge is in the best a position to determine if an alleged objectionable remark has a prejudicial effect. *Roundtree*, 568 So.2d at 1177.

¶56. If sustaining the objection alone is considered to be inadequate to remove the alleged prejudicial effect of the objected matter from the minds of the jury, then the court must be requested to instruct the jury to disregard the matter. *Anderson v. Jaeger*, 317 So.2d 902, 906 (Miss. 1975). The jury is presumed to understand that the court disapproves of any testimony when an objection is sustained. *Estes v. State*, 533 So.2d 437, 439 (Miss. 1988).

¶57. In the closing argument a prosecutor is allowed to argue evidence that has been admitted. *Brooks v. State*, 763 So.2d 859, 864 (Miss. 2000). However, "arguing statements of fact that are not in evidence or necessarily inferable from it which are prejudicial to the defendant is error." *Id. Dancer v. State*, 721 So.2d 583 (Miss. 1998); *Banks v. State*, 725 So.2d 711 (Miss. 1997).

This Court does not condone the prosecution stating matters not in evidence and potentially causing the jury to disfavor the defendant. *Brooks*, 763 So.2d at 864; *Banks*, 725 So.2d at 711.

¶58. "The test for determining if improper argument by the prosecutor to the jury requires reversal is 'whether the natural and probable effect of the improper argument of the prosecuting attorney is to create an unjust prejudice against the accused as to result in a decision influenced by the prejudice so created." *Brooks*, 763 So.2d at 864 (quoting *Davis v. State*, 660 So.2d 1228, 1248 (Miss. 1995)).

¶59. Slaughter claims that the reference to the gun by the prosecution, in the opening and closing statements, is the only link to show how he allegedly acquired the gun that was used in the shooting. In the case sub judice, the statements made by the prosecution do not warrant reversal. The fact that the prosecution commented on the ownership of the gun does not rise to the level of unjust prejudice in this case.

¶60. The gun was admitted into evidence during the testimony of Officer Herman. In addition, Richardson testified that Stepney was with Slaughter, Ogletree and her at the hotel on the night of the murder. Since the gun is in evidence, any writings on the gun would be proper for comment.

¶61. Moreover, the testimony of numerous witnesses at the apartment complex described a gun that was shiny, silvery, or nickel-plated. Richardson stated that she saw Slaughter place a "silver, big, shiny

gun" in a holster on his hip. Richardson also testified that she heard shots being fired at the scene. Slaughter had the same silver, shiny gun in his hand that he had in the hotel. Furthermore, according to Richardson, Slaughter returned to the car bloodied and stated something along the line of "I killed him." The gun allegedly was disposed of in a drain near a railroad crossing by Slaughter and Ogletree. Information provided by Richardson enabled the police to recover a gun by the railroad crossing. The crime lab technician testified that the recovered gun's characteristics were consistent with it being the gun that fired the projectiles and a possible source for discharging the components. There is substantial testimony in the record pertaining to the gun, separate and apart from the comments made by the prosecution, to provide the jury with enough information to link the recovered gun to Slaughter. Accordingly, the facts of this case do not warrant reversal. To the extent that any prejudice may have arisen by the prosecutor's comments, the error is harmless. This issue is without merit.

III. Great Care and Caution Jury Instruction

¶62. Slaughter contends that the trial court erred in refusing jury instruction D-5 and D-unnumbered pertaining to a great care and caution instruction. Slaughter claims that Richardson was an accomplice to the murder. In addition, Slaughter maintains that should this Court agree with his immunity argument, then the great care and caution instruction should also apply to Murray, Seldon and Dugan. We find that there was no error in excluding the proffered testimony as to

Murray, Seldon and Dugan's federal immunity and, therefore, no such instruction should apply to them.

¶63. Jury Instruction D-5 read as follows:

> The testimony of an alleged accomplice is to be considered and weighed with great care and caution and suspicion. You may give it such weight and credit as you deem it is entitled.

Jury instruction D-unnumbered reads as follows:

> The testimony of one who provides evidence against the defendant for immunity from punishment must always be examined and weighed by the jury with greater care and caution than the testimony of ordinary witnesses. You the jury should consider and weigh such testimony with great care and caution and suspicion. You may give it such weight and credit as you deem it is entitled.

Both instructions were refused by the trial court. While Slaughter maintains that Richardson was an accomplice, she was actually indicted by the State of Mississippi as an accessory after the fact, not an accomplice. Standard of review

¶64. It is within the discretion of the trial court to grant a cautionary instruction pertaining to the testimony of an accomplice witness. *Burke v. State*, 576

So.2d1239, 1242 (Miss. 1991). The discretion is not absolute and may be abused. *Id.*

¶65. This Court, in *Wheeler v. State*, 560 So.2d 171 (Miss. 1990), held the following:

> In *Van Buren v. State*, 498 So.2d 1224, 1229 (Miss.1986), this Court said, "the granting of a cautionary instruction regarding the testimony of an accomplice is discretionary with the trial judge." (Citations omitted). However, that discretion is not absolute; it may be abused. 522 So.2d at 754. (FN2)
>
> The *Derden* case stated that two of the aspects in determining whether a trial judge has abused his discretion concerning a "caution and suspicion" instruction are: (1) was the witness an accomplice; and, (2) was his testimony without corroboration. In *Green v. State*, 456 So.2d 757, 758 (Miss.1984), this Court said that a judge's discretion is subject to abuse when the State's evidence rests solely upon the testimony of an accomplice and there is some question as to the reasonableness and consistency of the testimony, or the defendant's guilt is not clearly proven.

See also Williams v. State, 729 So.2d 1181, 1188 (Miss. 1998); *Holmes v. State*, 481 So.2d 319, 323 (Miss. 1985).

¶66. This Court has defined an accomplice in prior case law. "An accomplice is a person who is implicated in the commission of a crime." *Brewer v. State*, 725 So.2d 106, 124 (Miss. 1998). An accomplice has also been defined by this Court as "a person who is implicated in the commission of the crime. That is to say, that if the evidence admits a reasonable inference that the witness may have been a co-perpetrator or the sole perpetrator the cautionary instruction should be given." *Williams v. State*, 729 So.2d 1181, 1188 (Miss. 1998)(citing *Dedeaux v. State*, 125 Miss. 326, 87 So.664 (1921)); *Burke v. State*, 576 So.2d at 1242.

¶67. An accessory after the fact has been defined by this Court as "a person assisting one who has completed the commission of a felony to avoid being apprehended, arrested, convicted, etc." *Chase v. State*, 645 So.2d 829, 851 (Miss. 1994).

¶68. The Court of Appeals in *Smothers v. State*, 756 So.2d 779, 787 (Miss. Ct. App. 1999), had a similar situation as the case at hand, in which the court held the following:

> The disputed jury instruction characterized Carney as either a co-defendant or an accomplice of Smothers, even though Carey was only charged as an accessory after the fact which was later dismissed. A cautionary instruction about accomplice testimony is not required unless there is an accomplice. Since Carney was neither an accomplice

> nor a co-defendant and Smothers failed to present any evidence to the contrary, the cautionary instruction requested was correctly denied, and this assignment of error is without merit.

Likewise, Richardson was not an accomplice. She was indicted for accessory after the fact. Further, her testimony was corroborated by other witnesses. Since the facts of the case sub judice fail to meet the *Derden* test for giving cautionary instructions, the trial court was within its discretion and correctly refused the instruction. Accordingly, this issue is without merit.

CONCLUSION

¶69. For these reasons, the judgment of the Circuit Court of Harrison County is affirmed.

¶70. CONVICTION OF MURDER AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF MISSISSIPPI DEPARTMENT OF CORRECTIONS, AFFIRMED.

PITTMAN, C.J., McRAE AND SMITH, P.JJ., WALLER, COBB, DIAZ, CARLSON AND GRAVES, JJ., CONCUR.

(FN 1) Apparently, the F.B.I. and Secret Service had been investigating a number of crimes in Atlanta. These alleged crimes did not include the murder of Reynolds although some of the testimony concerned the murder.

(FN 2) *Derden v. State*, 522 So.2d 752, 759 (Miss. 1988).

APPENDIX

2. Trial Court rulings on admission of testimony.

MR. SIMPSON: Your Honor, since we're on the record now, I would like to go ahead and -- this is based on the objection that I made during the voir dire. I would like to go ahead and move in limine to prohibit the defense during opening statements from making any reference to criminal conduct or conspiracy or any criminal investigation by the FBI or Secret Service or the Justice Department, or any other reference to the criminal character of the victim, Kelvin Reynolds, until some evidence is introduced to the same.

MR. CROSBY: We expect the testimony will be that the items that the State just identified are all material to the defense and will be brought out in both the State's case and the defense case. We expect that the whole -- our whole theory of this defense is that the reasons for the witnesses coming forward is because of the federal investigation and the reasons for the whole case is because of the federal **[116]** investigation; and that without talking about character evidence of the decease, we still -- the fact remains that he was involved in extensive criminal activity with the defendant; and that the State is going to -- From my understanding, unless I'm going to be completely surprised, the State is contending that the motive behind this case is that the defendant believed that the deceased was testifying against him at a Federal Grand Jury, and that's what all the witnesses are going to -- for the State are supposedly going to say, is that the defendant was arguing with the deceased over his testimony against him; and therefore, he murdered him. That's their whole -- that their case. And I can't believe that they

would even -- I mean, when we expect that's what the testimony is going to be, I can't imagine not being allowed to summarize that in the opening statement.

MR. SIMPSON: Your Honor, the State doesn't have to prove motive, and we don't have any intention of attempting to fashion a motive for this crime. The testimony may be elicited that there was an argument about whether or not the deceased was a government informant. But the state has no [117] intention of developing direct testimony about a federal investigation in Atlanta and the substance of that. The defendant has prior convictions that are, in my opinion, admissible under 404, and we may get into that. They are for fraud and other crimen falsi type crimes. But we're not putting on any federal agents in our case in chief or anyone else who's going to testify that, you know, these people, the defendant as well as the deceased, were subjects of a federal investigation.

MR. CROSBY: Well, --

MR. SIMPSON: And I really don't know how that can be brought out other than through hearsay. The only witness -- There was reference made in the voir dire regarding all the deals that the State made, but the only witness who has been given anything -- and it wasn't so much in exchange for testimony. Regina Richardson was indicted in a separate indictment for accessory after the fact, and that case has been dismissed against her and she is expected to testify. Some months ago that was done. But she is local, she's not from Georgia, and she has no knowledge -- has no

knowledge and will not be giving any direct testimony as to any federal investigation.

[118] THE COURT: Well, how can the character of the victim be introduced into evidence to begin with?

MR. CROSBY: I'm not going to talk about his character. I'm going o talk about his criminal involvement with the defendant, his testimony at the Federal Grand Jury Level. I mean, just by the State telling me this, it may modify the way I want to defend the case. But I do think that if we expect in my defense that this testimony is going to come out, we reasonably believe it will come out, that we should be entitled to do so.

THE COURT: Well, I think maybe that you might be correct if that evidence does come out. But until such time as it does come out, it would be improper -- If the State opens the door for you, then -- but up until that time, you can't do it. And it would be improper to make that in your opening statement, that you expect that proof to be, the State saying it's not going to be, and that would be just in anticipation.

Now, if they open a door concerning this, then certainly the ruling could be different. But at this point in time, of course, the State is saying that it's [119] obvious they do not have to prove any motive for a murder or a killing. It's the fact that one occurred is all that they've got to prove.

MR. CROSBY: Well, that may be all that they have to prove, but out defense is going to be based on that. And if they don't bring it out, I submit that once

they start the case, they've opened the door for us to prove our -- to bring out our defense, and our defense is that this case was based on -- and is stemming directly from the Federal Grand Jury investigation.

THE COURT: Is that a defense for a murder?

MR. CROSBY: It's a defense that someone else other than this defendant did it.

MR. SIMPSON: Well, that may be, and we'll -- you know, if his client wants to take the stand and say, you know, he has some information that that's why the deceased was killed, then we can address that on cross. But, you know, certainly there are going to be some things brought out, but not to the extent that I believe the deceased -- you can in opening statement allege the deceased was part of a criminal conspiracy. I don't think that **[120]** can be established by the evidence. To my knowledge, there's no evidence that he testified with the Federal Grand Jury. Certainly it's not going to come out in any direct evidence that he ever testified.

THE COURT: Well, all right. I sustain the motion in limine as far as any comments in opening statement concerning any criminal activity on the part of the victim in this case. At some time in the testimony if a door is opened concerning that, then the ruling will be different.

MR. CROSBY: Well, I need to establish some very clear rules because I don't want to cause a mistrial. But if I understand your ruling, I cannot tell the jury that my client was talking to the deceased about --

asking the deceased whether or not he was cooperating or giving information to the Federal authorities that was conducting an investigation against many people; and I cannot, apparently, tell the jury in my opening statement that the defendant is expected to testify that he was trying to get the deceased to bring his vehicle to the Grand Casino to -- or to come to the Grand Casino for the purpose of having a discussion with someone above them in his criminal activity that they were [121] doing for the -- to talk about and deny that he was giving the information to the Federal authorities.

THE COURT: No, sir, you can't do that because that's presupposing that at the appropriate time you're going to put the defendant on the witness stand to testify to this, because I take it that there were no other -- Were there any eyewitnesses to this shooting?

MR. SIMPSON: Yes, sir; there are.

THE COURT: Anyone else heard those statement made?

MR. SIMPSON: No, sir.

THE COURT: Then how is it going to be shown?

MR. CROSBY: He's got at least three witnesses that are going to testify that they overheard the defendant or -- talk to the deceased; that the defendant was trying to get the deceased to come to the Grand Casino.

MR. SIMPSON: To borrow his vehicle, correct.

MR. CROSBY: And they would talk about the fact he was going to borrow the vehicle. But it's also expected and integral to the defendant, a key part of the defense, that the defendant, who is **[122]** expected tot testify, that the reason why -- that's not the only reason why he was supposed to come there. That they weren't discussing all the details of why he was coming there on the telephone; that they already met in person and discussed it the night before, which is in the statement of some of the other potential -- or other -- other witnesses that the State has provided in discovery.

I'm submitting you right now that -- and I'm -- I am -- I mean, we're doing this in limine, so I don't guess I'd have to re-raise it. I don't -- I'm making a -- I'm not asking you if -- I mean, I'm not asking you the law, but I'm stating this on the record that if we're not allowed to lay out what we expect the evidence to show, that we're being denied our right to make an opening statement.

Opening statement is an important part of the trial, and I'm moving for -- I would move for a mistrial right now rather than have to raise it again at the time when I'm denied that right because your ruling right now that I can't do it, that I cannot make that part of my opening statement of what I fairly believe the evidence and testimony to show.

[123] The remedy to the State is to come back in closing argument and say: "well, the defendant made statements in -- made factual statements and he didn't prove it, and you can hold that against him." The remedy would not be for a judge to prohibit me from making an opening statement as to what I fairly believe the evidence will show. And I do. But he's limiting me

and preventing me from being able to defend my case. He's telling me: "Well, I'm not going to talk about the Federal Grand Jury."

COURT REPORTER: Slow down, Mike.

MR. CROSBY: The prosecutor is saying --

THE COURT: All right. You've made your point. Your request for a mistrial based upon my ruling is overruled. The matter of reserving your opening statement, you have a right to do that, and you can reserve your opening statement; and then, of course, at the time that you present your opening statement, you can make such statements if the State has opened that door and that avenue to raise that particular defense.

MR. CROSBY: I'll submit that we -- that it's important in my belief --

[124; RE 47] THE COURT: Well, it's important to the -- it's important, I realize, as far as what you're saying is important to your defense. But it's also important to justice in this case that no broad statements be made in opening that may not be presented during the course of the trial and put the burden on the other party to then, in closing, say they didn't prove it. I've seen that done in many occasions, and I -- and justice requires that you be held to that. So that's my ruling.

MR. CROSBY: I understand your ruling, and I want to make sure that I follow your ruling.

THE COURT: I'm sure you will.

MR. CROSBY: Whether we agree or don't agree, you know, that irrelevant. I want to follow that ruling. And I think what you told me right now is that you said I could reserve it until a later time. But, of course, I don't want to reserve it. I want to hit it at the very beginning before the jury hears any of the testimony, which is the right of both the defendant and the prosecutor to do that before they hear any testimony. And I submit it is impairing my defense if I must wait until after the State has its way, and then at [125; E 48] that point I have to then -- you know, because I'm going to make some kind of opening statement at the beginning, and I don't think that -- in all likelihood, you're not going to let me make a second opening statement before --

THE COURT: Oh, I certainly won't let you make a second opening statement because the rules do not allow it.

MR. CROSBY: So I'm not -- So in my judgment t of how I should defend this case, I must make an opening statement in order to properly defend it. And by doing so and not being able to give what I -- what I fairly expect the evidence to be, I'm being denied -- my client is being denied his right to that which would be entitled by making a opening statement.

THE COURT: You have your record. You're overruled on your motion.

Ready?

(ALL COUNSEL APPROACHED THE BENCH, AND THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE THE HEARING OF THE JURY:)

MR. CROSBY: Before I make my opening statement and deciding whether I'm going to make it, you want to have this hearing outside the presence of the jury.

(BENCH CONFERENCE CONCLUDED, AND THE FOLLOWING PROCEEDINGS WERE HAD IN THE PRESENCE OF THE JURY:)

[147; RE53] THE COURT: Okay. The jury will go with the bailiff, please.

(JURY OUT AT 2:25 P.M., AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. CROSBY: Your Honor, this is -- before we make a decision as to whether to proceed with out opening statement, I have to clarify a few issues in light of your ruling. You previously ruled that I cannot mention anything concerning the federal investigation, even though it was my -- our position that our defense is based on he fact that there was a Federal Grand Jury investigation, that there was criminal activity which was taking place unrelated to a murder, most of which was taking place in Atlanta.

Now, the prosecutor has made reference to Buck Murray and to Linda Dugan -- Linda Dugan is the ex-wife of my client -- and statements that my client

allegedly made to those people. It is our position that the statements that Buck Murray is expected to come in here and testify to can be explained only by discussing the other criminal activity that was taking place. The conversation between my client and Buck Murray took place concerning stolen Jeeps that Buck Murray [148; RE 54] was involved with with the deceased, Kelvin, and that he -- that Buck Murray allegedly -- or claims hat my client allegedly made a statement that there was going to be people from Miami come over and kill the decease.

It is our - It is integral to our defense that we be allowed to put into evidence that Darryl Brown, who was mentioned throughout all the Grand Jury -- Federal Grand Jury transcripts by all the witnesses, was a higher up person who we believe was the person who was responsible for this, and he was, in fact, from Miami.

Additionally, Linda Dugan testified against my client in the Federal Grand Jury, and she was convicted for federal charges. And that would certainly go to her motive and reasons for testifying -- or making statements against my client, and I submit that we should be allowed to bring that out, any motive or bias that the witnesses would have against us, and also our theory of the defense in our opening statement. And the prosecutor has opened a door in that these are people who were involved in that federal investigation and their motives would have to e explored and disclosed in all fairness to defend the [149; RE 55]case, and we certainly expect that this would come out.

Additionally, Regina Richardson did, in fact, testify in front of the Grand Jury, and a lot of the -- a lot of the things that she heard and, we're going to submit,

misunderstood can be explained only if we are allowed to tell the whole story by way of the criminal activity of Kelvin and the suspected belief this Kelvin was a federal informant. And actually, the State is going to say that it was -- in reality it was Buck Murray who was the federal informant as opposed to Kelvin Reynolds, but that that was misunderstood. That is their position that they actually have advised me.

And then finally, with respect to Tracy Stepney, the prosecutor in opining statement made two statements that Tracy Stepney is allegedly going to testify to, one of which is that she did not want to go -- she said -- the prosecutor said Tracy Stepney did not want to go with Regina and Jodon; she wanted to stay at the hotel.

Another statement was that Tracy Stepney gave Jodon a relative's gun, which is the one they submit was used in the killing, to clean. Now, Tracy Stepney is a [150; RE 56] defendant in this case. The prosecutor is only allowed, as I am, only allowed to give in opening statement a rendition of what we reasonably expect what we will be able to prove by testimony.

As late as yesterday, it is my understanding that Tracy Stepney is not going to be a witness in his case and has not been offered any deal to testify in his case. And after conferring with her attorney, it's my understanding that they -- if we call her, that they would invoke their right to the Fifth Amendment protections. So the prosecutor has injected these two statements in the opening statement from a witness who we are on notice is not going to be able to be called by either party. And so that's sort of a separate issue.

But Judge, I would move for a mistrial on the basis of him improperly injecting onto evidence and

into opening statement things which he knows cannot be proven and will not be proven or reasonably expect to be proven during this trial.

So I'm asking you to, in light of how he has phrased and boxed us into this, in light of the way he has couched his opening [151; RE 57] statement, in light of what I reasonable expect to submit, at this point, I move that I should be allowed to, number one, talk about our defense, that is, how it's involved with the Federal Grand Jury; and secondly, that we should be entitled to a mistrial on the basis of the alleged statements and information that could come only from Tracy Stepney.

MR. SIMPSON: Let me start with the latter, if I may. With regard to Stepney, the transcript will reflect exactly what I said. I believe my statement was that Regina Richardson will testify that Tracy Stepney decided not to go with them at the time they were in the valet area about to leave allegedly to go gambling and partying; that she decided not to go and stayed at the casino. Regina Richardson is going to say exactly that.

She is also going to say -- I think it's Regina Richardson is also going to say of her personal knowledge that Tracy Stepney told her -- she had personal knowledge that the gun that was used belonged to Tracy Stepney's dad because Stepney was irritated the gun – that her dad's gun had been used and disposed of. So That's Richardson's testimony. We have [152; RE 58]no deal and they're not calling Stepney. That's testimony that can be elicited from Regina Richardson and that's all in the discovery. That's Regina Richardson's statement.

MR. CROSBY: Your Honor, as he said, the transcript will bear out what the prosecutor said in his opening statement. I remember it differently, but reasonable people can remember things differently. I think I'm correct on what I'm saying.

Nevertheless, a hearsay statement of Tracy Stepney, I would submit, would not be allowed into evidence, and I believe the prosecutor should know this; and therefore, the statement was nonetheless made. And for that reason, we should be entitled to a mistrial.

MR. SIMPSON: I think I also said, Your Honor, she saw the gun. Regina Richardson saw him put the gun in his holster that night.

MR. CROSBY: Well, my objection is this evidence that Tracy -- that the gun belonged -- that the testimony is going to show what the prosecutor has told the jury is that this was Tracy Stepney's relative's gun, and that she gave it to Jodon Slaughter to be cleaned; and she was upset [153; RE 59] about the fact he used her gun -- her relative's gun in this killing.

I would like for him to tell us how that testimony would be admissible without Tracy Stepney to testify to those facts. And I submit you can't do so; that Regina cannot -- that even though Regina can say he had a gun and the gun was put in the grate, or the police recovered the gun and that engraved on it was the name of Stepney, that's one issue that could come in if that's what Regina wants to say.

But what I would submit would not come in was that Tracy Stepney gave the gun to Jodon for the purpose of having it cleaned, and that that was her

relative's gun and that she was upset about Jodon using that gun in an alleged killing.

Now, --

MR. SIMPSON: Your Honor, that's not before the jury. I didn't say that in opening statements. I just told you that in argument about the cleaning. That's not before the jury. This is just a rabbit trail.

THE COURT: What's before -- What do you have before the Court at this time, a motion for mistrial based upon the statements of the prosecutor; is that [154; RE 60] correct?

MR. CROSBY: Yes, sir.

THE COURT: That's overruled.
Now, what else do you have?

MR. CROSBY: I also have a motion to --

THE COURT: To reconsider the order in limine concerning the Federal Grand Jury investigation and/or the involvement of the victim in some criminal activity; is that correct?

MR. CROSBY: That's part. And there's also the involvement of the other witnesses in criminal activity in conjunction with my client and the deceased, and the context --

THE COURT: Okay. As far as any criminal activity on the part of the victim himself, I decline to revisit that matter. You will not be able to go into that.

That is not admissible in evidence. The character or the -- any crimes that the defendant may have been -- not the defendant -- the victim may have been involved in some fashion, that's not admissible in our courts.

As far as the character or the credibility of the witnesses that -- as they testify, you will be entitled to [155; RE 61] cross-examine them. Certainly, you can go into any matters that might be -- might reflect upon the character of the witness, because witnesses are always subject to cross-examination concerning their character. But any involvement involving this victim in all of this is absolutely inadmissible, period, because it doesn't mater what kind of character that person might have been. It does not raise a defense as to his killing, period.

MR. CROSBY: It's not to raise a defense as to why Jodon would allegedly kill Kelvin. It's only to explain why, number one, the witnesses that were identified by the State would make such a statement; secondly, how they could misunderstand such a statement; and three, what -- the res gestae of what was going on.

THE COURT: Well, you can't convince me that the left hand is the right hand at this time, and I'll stand by my ruling. You cannot go into that.

Now, do you want to make your opening now, or do you want to reserve? It's up to you. I've already told the jury that you have that right to reserve.

THE COURT: While we're waiting here, Mr. Crosby, do you want to do your proffer? Does it concern this witness here?

MR. CROSBY: Yes, sir.

THE COURT: Okay.

THE COURT: Would it be best if she's not in the courtroom with the proffer, or what?

MR. CROSBY: No, sir. I need her to testify concerning the proffer.

THE COURT: Well, now, wait a minute. That would be inappropriate. That's inappropriate. She hasn't been tendered for cross-examination, and that would be in the nature of a cross-examination, as I would perceive it.

MR. CROSBY: My proffer is to go to her motive and such and reasons behind her testimony. I need to give a full picture of what it is, and it goes to your earlier ruling about the federal investigation. I need her testimony concerning that.

THE COURT: Well, I don't -- I don't know what any arrangements have been made as far as the State of Mississippi is concerned, nor any agreements that have been struck. That may very well come out on -- it probably will come out on direct [314; RE 63]

examination. Do you anticipate it on direct examination?

MR. SIMPSON: Yes, sir; we do.

THE COURT: Well, I'll have to wait and see what comes out at that point in time. And then, if necessary, I'll take a recess and let you make a proffer if you feel that it's getting close to the area that I've already instructed you on.

MR. CROSBY: Yes, sir, that's what I -- what I felt like. Without getting into it, she had a cooperation agreement with the federal government, immunity agreement. And I wanted to -- I felt like in light of your ruling, that I would be going past that, and that's why I wanted her to explain that.

THE COURT: We'll get to that when we get to it.

MR. CROSBY: Can we ask for the witness to be admonished not to talk with anyone?

THE COURT: I'm going to.

All right. We're going to take the noon recess now for ourselves.

Ms. Richardson, during the noon break, you're at liberty to move around as you see fit, but do not discuss your testimony with anyone during the break. . .

MR. SIMPSON: Your Honor, we'll cll another witness. Buck Murray.

THE COURT: All right. Bring him in.

(PAUSE IN PROCEEDINGS)

(THE OATH WAS ADMINISTERED>)

LEMUEL "BUCK" MURRAY,
was thereupon called as a witness for and on behalf of the State, and, having been duly sworn, testified as follows:

MR. CROSBY: Your Honor, before his testimony, we had a matter of that motion that we were -- we discussed bringing up [520; RE 111] concerning the exclusion of this testimony, which I would say it would be --

THE COURT: His testimony?

MR. CROSBY: Yes, sir. This is Buck Murray, correct?

MR. SIMPSON: That's who it is.

(PAUSE IN PROCEEDINGS>)

MR. SIMPSON: May we approach?

THE COURT: Yeah.

(ALL COUNSEL APPROACHED THE BENCH, AND THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE THE HEARING OF THE JURY:)

THE COURT: On what basis?

MR. SIMPSON: I think this is just about the federal investigation stuff.

MR. CROSBY; Uh-huh (affirmative). And it's more detailed on it. And also –

THE COURT: Have you got a formal motion on this so I can know what the motion is about?

MR. CROSBY; No.

THE COURT: Well, then I'm overruling it and you won't o into any of it, because I'm tired of this.

MR. CROSBY: And I won't be allowed to make a proffer?

THE COURT: What?

MR. Crosby: I won't be allowed to make a proffer?

[521; RE 112] THE COURT: You can do it after his testimony.

(BENCH CONFERENCE CONCLUDED, AND THE FOLLOWING PROCEEDINGS WERE HAD IN THE PRESENCE OF THE JURY)

THE COURT: Proceed.

DIRECT EXAMINATION BY MR. SIMPSON:

Q. Would you state your name, please?

A. Lemuel Murray.

Q. Are you also known as "Buck"?

COURT REPORTER: Your first name again, please?

THE WITNESS: Lemuel, LEMUEL.

BY MR. SIMPSON:

Q. Mr. Murray, let me get you to keep your voice up loud so everyone can hear you, please, and speak slowly enough that the court reporter can write down everything you say, all right?

A. Okay.

Q. Where do you reside, Mr. Murray?

A. Atlanta, Georgia.

Q. How long have you lived in Georgia?

A. All my life.

Q. What business are you in?

A. Automobile industry.

Q. Do you know the defendant, Jodon Slaughter?

A. Yes, sir.

Q. How long have you known him?

A. Since around 1989, '90.

BY MR. CROSBY:

Q. And you said that in response to the question by Investigator Barnes, who said: "who did he say he had coming up to blow his head off?" And your reasons was: "He just said he had some boys coming up from Miami, " correct?

A. No, that's not correct.

THE COURT: All right. Mr. Crosby, you've shifted gears now, and you've gone into a matter of a statement that apparently this witness made to Officer Barnes from Gulfport; is that right?

MR. CROSBY: Yes, sir. That's --

THE COURT: I don't have an problems with your using that in cross-examining this witness, so we're wasting time for you to go through all of this and try to cross-examine him at this time.

MR. CROSBY: The only reason that I would do this now is because in talking about Miami, --

THE COURT: Well, we're wasting time right now. What he told the officer from Gulfport, you can cross-examine him as to that. But the matter of the investigation in Atlanta, Georgia, the Grand Jury testimony, all of that is going to be excluded, and I stand by my ruling on that.

Now, you may feel that it has some relevance, but I don't think that it has any relevance. And under 403, although relevant evidence -- relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration or undo delay, waste of time and needless presentation of cumulative evidence.

Now, the thrust of your position in this case seems to be that the victim in this case was someone who was assisting the government in investigating your client. That falls completely in line with the exclusion of character evidence of the victim, and I cite you to the comments under the rule of -- under 404. It says: "The victim's character is irrelevant. The fact that a bad man rather than a good man was murdered or beaten is inconsequential," citing the cases. The only time that it would be admissible would be to show that there was a -- that the victim was the [**536**: RE 120] first aggressor. That's it.

MR. CROSBY: Well, obviously, I haven't stated it correctly, then, if that's --

THE COURT: Well, if you haven't stated it correctly, that is exactly my interpretation of it, so let's move on, okay?

MR. CROSBY: I would --

THE COURT: You still have not asked this man the question which I really need to know: Has he been

convicted of a crime which falls within the matter of character assassination, I'll call it.
BY MR. CROSBY:

Q. Have you been convicted of a crime?

A. Ever convicted of a crime:

Q. Yes, sir.

A. Yes, sir.

Q. What would those crimes be?

A. I had two DUI's, things of that nature.

Q. Anything involving bad checks, fraud, stealing, grand larceny?

A. Never.

Q. Now, when you said that they were ratting him out, what did you mean by that, or said that Kelvin Reynolds –

A. Fifth Amendment, sir.

APPENDIX

3. *Slaughter v. Mississippi*, 2000-KA-01533-SCT,¶5 (Feb. 14, 2002). Order denying rehearing (May 23, 2002)

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
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May 23, 2002

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 23rd day of May, 2002.

Supreme Court Case # 2000-KA-01533-SCT
Trial Court Case # 99-331

Jodon Antonio Slaughter v. State of Mississippi

Motion for rehearing filed by appellant is denied.

NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

APPENDIX

4. Trial Court ruling on jury instructions.

Judge, when I went into this trial, there was a distinct possibility that we would have some of the other co-defendants or other indicted defendants testify. And we didn't know right up until -- in fact, their attorneys have been here and sat in the courtroom and gave every indication they were desperate to try and work out a deal where their clients would testify, and that's why I used the vague word of "alleged accomplice." I kept it vague because I didn't know who all was going to testify. But I would need to modify this, because there was only one alleged accomplice in this, and -- namely, Regina Richardson.

THE COURT: Well, you want to redo this to make it read that the testimony of Regina -- whatever her name is -- Well, reword it however you want to word it to make it specific for her.

MR. CROSBY: I would submit: "The testimony of Regina Richardson, an alleged accomplice, is to be considered," et cetera. The rest of it would remain the same.

MR. SIMPSON: To which we would object.

THE COURT: On what basis?

[668: RE 127] MR. SIMPSON: Two bases: One, she's not an accomplice. She's not indicted for murder. She's indicted for accessory after the fact, which is not a lesser included offense. You can't be found guilty of accessory after the fact as a lesser included to murder.

It's a separate stand-alone crime in and of itself, and an accomplice has to be one -- someone who is willingly there, present and participates in some overt act towards the furtherance of the crime. There's no such evidence of that at all. The only testimony is that she did not know in fact that that crime was fixing to take place.

My second objection is that it singles out the testimony of a single witness, which is impermissible.

MR. CROSBY: Well, we have to -- I'm sorry.

THE COURT: I've not thought about it in the nature of the charge that she was charged with, accessory after the fact. But those instructions that have been given in this nature do relate to those who participated in the crime itself.

MR. SIMPSON: Willingly participated.

THE COURT: Do you have some authority on that? This give me a problem [669: RE 128] here because it -- because technically, she was not a -- there's no evidence that she was a participant in this crime other than driving out there. You never were able to get anything out of her that she knew in advance of what was going to happen; that she willingly went out there for that purpose. And the only thing that has come out is, is that she was indicted as an accessory after the fact, and that that was dismissed.

MR. CROSBY: Here's what she did say, and it was contradictory, but it was said at one point or the other, either brought out in her prior statements or in

her testimony, that she was expecting there to be some kind of --

THE COURT: Argument, fight maybe.

MR. CROSBY: -- an argument and possibly even as much as a pistol whipping, although, not a killing. When she participated in this, she turned her lights off on her car, she drove around, she helped get to this location, and then she -- her conduct subsequent to that without any threats being made to her, she continued to help and -- allegedly help in the concealment of evidence and such, which would all be -- could have been used [670; RE 129] against her as someone who was a principal being -- I mean, if you go in to rob a bank or steal a car or take a car away from someone, the violence, rob a Quick Stop, you could -- I mean that's felony murder.

MR. SIMPSON: If you have that intent prior to the overt act in furtherance of the crime. There's no evidence that she had any knowledge, intent or did anything in furtherance of committing any assault upon the gentleman.

And in fact, You Honor, S -- I mean, all he wants to do is attack the credibility of Regina Richardson. He has instruction D-3 regarding prior inconsistent statements. That instruction is there for the jury to attack her credibility. To try to include her as an accomplice, someone who is engaged in the furtherance of the crime, there are no facts to support that.

THE COURT: Of course, I guess what her answers were, were -- that could perhaps be considered to be self-serving, her saying that she did not anticipate

there being any problems, that at one point in time, she testified as I recall, that she -- when the -- she saw the defendant take a gun from the bag and stick it in his